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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

**BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE**

SANDRA MCMILLION, ET AL.,	)	
	)	
PLAINTIFFS,	)	NO. C-16-3396 YGR
	)	
VS.	)	MONDAY, OCTOBER 2, 2017
	)	
RASH CURTIS & ASSOCIATES,	)	OAKLAND, CALIFORNIA
	)	
	)	CASE MANAGEMENT CONFERENCE
	)	
DEFENDANT.	)	
	)	

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**FOR PLAINTIFFS:** BURSOR FISHER, P.A.  
1990 NOR CALIFORNIA BLVD., SUITE 940  
WALNUT CREEK, CALIFORNIA 94596  
BY: YEREMEY O. KRIVOSHEY, ESQUIRE

**FOR DEFENDANT:** ELLIS LAW GROUP  
740 UNIVERSITY AVENUE, SUITE 100 EAST  
SACRAMENTO, CALIFORNIA 95825  
BY: MARK ELLIS, ESQUIRE  
ANTHONY P.J. VALENTI, ESQUIRE

**REPORTED BY:** DIANE E. SKILLMAN, CSR 4909, RPR, FCRR  
OFFICIAL COURT REPORTER

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 MONDAY, OCTOBER 2, 2017

2:48 P.M.

2 P R O C E E D I N G S

3 000

4 **THE CLERK:** WE WILL DO THE MCMILLION VERSUS RASH  
5 CURTIS.

6 CALLING CIVIL ACTION 16-3396 MCMILLION VERSUS RASH CURTIS  
7 & ASSOCIATES.

8 COUNSEL, PLEASE STATE YOUR APPEARANCES.

9 **MR. KRIVOSHEY:** GOOD AFTERNOON, YOUR HONOR. YEREMEY  
10 KRIVOSHEY FOR THE PLAINTIFFS.

11 **THE COURT:** GOOD AFTERNOON.

12 **MR. ELLIS:** GOOD AFTERNOON, YOUR HONOR. MARK ELLIS  
13 FOR RASH CURTIS FOR THE DEFENDANTS. AND WITH ME IS ANTHONY  
14 VALENTI.

15 **MR. VALENTI:** GOOD MORNING (SIC), YOUR HONOR.

16 **THE COURT:** GOOD AFTERNOON.

17 WELL, I UNDERSTAND FROM JUDGE CORLEY SHE'S HAVING A LOT OF  
18 PROBLEMS WITH YOU ALL.

19 HAVE YOU COMPLIED, MR. ELLIS, WITH MY ORDERS TO PRODUCE?

20 **MR. ELLIS:** WE HAVE, YOUR HONOR.

21 **THE COURT:** IS THAT TRUE?

22 **MR. KRIVOSHEY:** THAT'S TRUE. I THINK WE GOT THE  
23 PRODUCTION ON SEPTEMBER 20TH, I BELIEVE.

24 **THE COURT:** HAVE YOU REVIEWED IT? IS IT COMPLETE?

25 **MR. KRIVOSHEY:** I HAVE DONE MY BEST TO GET THROUGH AS

1 MUCH OF IT AS I CAN. I THINK AT THIS POINT I HAVE GOTTEN  
2 THROUGH ABOUT 50 PERCENT OF IT.

3 **THE COURT:** YOU WERE WITH JUDGE CORLEY LAST WEEK.  
4 WHAT WAS THE RESULT OF THAT HEARING?

5 **MR. KRIVOSHEY:** SO I UPDATED JUDGE CORLEY ON EXACTLY  
6 WHAT I SAID NOW. I SAID I WOULD DO MY BEST ON REVIEWING THE  
7 DOCUMENTS. WE STILL HAVE A NUMBER OF OUTSTANDING ISSUES.

8 THERE WERE OTHER SEARCH TERMS CONCERNING EMAILS THAT WE  
9 HAD PREVIOUSLY DISCUSSED, AND JUDGE CORLEY DECIDED TO GO IN A  
10 PIECEMEAL FASHION JUST TO LESSEN THE BURDEN.

11 AND AT THAT HEARING, I DIDN'T FEEL THAT IT WAS APPROPRIATE  
12 TO DEMAND THAT DEFENDANT PRODUCE ADDITIONAL DOCUMENTS WHILE I  
13 HAVEN'T WORKED THROUGH THAT FIRST BATCH. I JUST NEED TO WRAP  
14 MY HEAD AROUND THE ENTIRETY OF WHAT'S BEEN PRODUCED.

15 I GET A GOOD SENSE OF IT NOW THAT I HAVE GONE THROUGH  
16 ABOUT HALF OF IT, BUT WE STILL -- SO JUDGE CORLEY SET ANOTHER  
17 HEARING BEFORE HER ON THE 12TH AND ASKED THAT THE PARTIES FILE  
18 ANY OTHER MOTIONS REGARDING DISCOVERY, LIKE INCLUDING THE CALL  
19 LOGS AND THE OTHER ISSUES THAT WE HAVE GOING ON, BY THE 10TH.  
20 BUT THAT'S ON A CONDITION THAT WHAT HAPPENS HERE TODAY,  
21 BECAUSE AS THIS COURT KNOWS, WE ARE REQUESTING THAT THE  
22 DISCOVERY DEADLINE BE PUSHED BACK BY A LITTLE BIT.

23 **THE COURT:** WELL, I'M ONLY GOING TO PUSH IT BACK TO  
24 THE EXTENT -- SO IT WON'T BE FOR ANYTHING NEW; THAT IS, WE  
25 AREN'T RE-OPENING -- I CERTAINLY AM NOT RE-OPENING -- GOING TO

1 EXTEND DISCOVERY TO REOPEN SOMETHING.

2 SO ARE ALL OF THE REQUESTS MADE?

3 **MR. KRIVOSHEY:** YOUR HONOR, I THINK WE HAVE MADE ALL  
4 THE REQUESTS.

5 THE ONLY ISSUE IS, WE HAVE BEEN CONFERRING ABOUT  
6 DEPOSITION SCHEDULING AND WE HAVEN'T AGREED ON THE DATES YET,  
7 SO WE HAVEN'T ACTUALLY SERVED THE NOTICES OF DEPOSITIONS. BUT  
8 AS FAR AS THE REQUEST FOR PRODUCTION AND INTERROGATORIES, I  
9 BELIEVE THAT WE DON'T HAVE ANY PLANS TO SERVE ANYTHING NEW AT  
10 THIS TIME.

11 **THE COURT:** SO DO YOU HAVE A LIST?

12 **MR. KRIVOSHEY:** A LIST OF ALL THE DISCOVERY THAT HAS  
13 BEEN SERVED?

14 **THE COURT:** ALL OF THE DEPOSITIONS.

15 **MR. KRIVOSHEY:** I HAVE THEM -- I KNOW THAT WE ARE  
16 GOING TO BE SEEKING THE DEPOSITIONS OF THE FOUR CUSTODIANS WHO  
17 PRODUCED DOCUMENTS.

18 **THE COURT:** WHAT ELSE?

19 **MR. KRIVOSHEY:** AT THIS TIME WE DON'T HAVE ANYBODY  
20 ELSE AT THIS POINT. THEY HAVEN'T MADE AN EXPERT DISCLOSURE,  
21 SO THERE'S NO EXPERTS TO DISCLOSE. SO AT THIS TIME THOSE ARE  
22 THE ONLY PEOPLE.

23 WE MIGHT SERVE A TARGETED RULE 30(B)(6) DEPOSITION AS WELL  
24 IF WE FIND THAT THE -- THOSE CUSTODIANS ARE NOT KNOWLEDGEABLE  
25 AS TO, YOU KNOW, SOMETHING THAT'S BEEN AT ISSUE IN THIS CASE.

1           **THE COURT:** YOU BETTER GET THOSE DEPOSITION NOTICES  
2 ISSUED BECAUSE IF THEY ARE NOT ISSUED, THEY ARE NOT GOING TO  
3 BE SUBJECT TO ANY CONTINUANCE.

4           REBUTTAL DISCLOSURES ARE SUPPOSED TO HAVE ALREADY BEEN  
5 DONE. WHY HAVEN'T THEY BEEN DONE?

6           **MR. ELLIS:** ARE YOU TALKING ABOUT FOR RASH CURTIS?  
7 RIGHT NOW WE HAVE NO PLANS ON HAVING AN EXPERT.

8           **THE COURT:** SO YOU'RE NOT GOING TO DESIGNATE AN  
9 EXPERT?

10          **MR. ELLIS:** NOT INITIALLY. AND I DON'T THINK THE  
11 TIME FOR REBUTTAL EXPERTS HAS GONE PAST.

12          **THE COURT:** DID I EXTEND IT?

13          **MR. KRIVOSHEY:** YOUR HONOR, I THINK WHAT OCCURRED IS,  
14 IN THE INITIAL CASE MANAGEMENT STATEMENT THAT WE FILED AT THE  
15 VERY OUTSET OF THE CASE, WE HAD PROPOSED INITIAL EXPERT  
16 DESIGNATIONS AND REBUTTAL EXPERT DESIGNATIONS. AND IN THE  
17 COURT'S ORDER, THERE WAS ONLY ONE ENTRY THAT SAID REBUTTAL  
18 EXPERT DESIGNATIONS BUT NOT A DATE FOR INITIAL EXPERT  
19 DESIGNATIONS.

20          SO WE TOOK THAT AS TO MEAN -- WE THOUGHT THAT THAT MIGHT  
21 BE A TYPO SO THAT'S THE DATE WE DISCLOSED OUR EXPERTS SO THERE  
22 WASN'T REALLY A -- THERE WAS ONLY ONE DATE GIVEN.

23          **MR. ELLIS:** THAT'S CORRECT, YOUR HONOR.

24          **THE COURT:** SO YOU DIDN'T BOTHER TO COME IN AND SEE  
25 WHETHER THAT WAS A TYPO AND WHAT YOU SHOULD DO ABOUT IT?

1 HOW ABOUT THIS FRIDAY?

2 MR. ELLIS: OKAY.

3 MR. KRIVOSHEY: WELL, YOUR HONOR, OUR ISSUE WITH THAT  
4 IS THAT WE ARE ACTUALLY SEEKING -- SO OUR EXPERTS ARE GOING TO  
5 NEED TO SEE A LOT OF THE DOCUMENTS THAT HAVE YET TO BE  
6 PRODUCED. WE WERE GOING TO ASK THAT WE FILE AN AMENDED  
7 DISCLOSURE FROM OUR EXPERTS AS PART OF THE -- AS PART OF  
8 EXTENDING DISCOVERY. BECAUSE THEY HAVEN'T HAD -- YOU KNOW, IN  
9 ORDER FOR US TO EVENTUALLY PROVIDE THINGS LIKE CLASS NOTICE  
10 AND TO ASCERTAIN EVERYBODY THAT'S ACTUALLY IN THE CLASS, WE  
11 ARE GOING TO NEED THE PHONE RECORDS WHICH THOSE DOCUMENT  
12 REQUESTS HAVE BEEN SERVED, WE JUST HAVEN'T GOTTEN THEM YET.  
13 OUR EXPERTS ARE GOING TO NEED SIGNIFICANT TIME TO REVIEW  
14 THOSE.

15 THE COURT: WELL, IT LOOKS LIKE WHAT WAS ANTICIPATED  
16 IS THAT WE WOULD HAVE EXPERT OPINIONS WITH RESPECT TO THE  
17 CLASS CERTIFICATION. AND SO THE REBUTTAL EXPERT DESIGNATIONS  
18 WERE THERE TO BE RESPONSIVE TO THE COURT'S ORDER. AND THAT'S  
19 WHY YOU DIDN'T HAVE AN INITIAL.

20 UNDER YOUR ORIGINAL PROPOSED ORDER, YOU WERE GOING TO  
21 PROVIDE EXPERT DESIGNATIONS BACK IN... LET'S SEE.

22 MR. KRIVOSHEY: SO, YOUR HONOR, JUST TO CLARIFY,  
23 PLAINTIFFS DID DISCLOSE AN EXPERT EARLIER WITH THE CLASS  
24 CERTIFICATION MOTION. AND THEN WE, MORE OR LESS, REPACKAGED  
25 THAT SAME REPORT JUST TO ADD THE AUGUST DATE JUST TO MAKE SURE

1 BECAUSE WE WEREN'T SURE IF THAT WAS THE DATE THE COURT WANTED  
2 THE FORMAL EXPERT DISCLOSURES. SO WE -- IT WAS MORE OR LESS  
3 THE SAME REPORT IN ANTICIPATION THAT WE COULD AMEND ONCE MORE  
4 DOCUMENTS COME.

5 **THE COURT:** I'LL BE RIGHT BACK.

6 (PAUSE IN THE PROCEEDINGS.)

7 SO I'M NOW LOOKING AT THE CMC STATEMENT YOU FILED BACK ON  
8 SEPTEMBER 26TH, 2016 WITH YOUR PROPOSED SCHEDULE THAT WE  
9 DISCUSSED HERE IN COURT.

10 YOUR MOTIONS FOR CLASS CERT WITH YOUR EXPERT REPORTS -- OR  
11 PLAINTIFFS' MOTIONS FOR CLASS CERT WITH THEIR EXPERT REPORTS  
12 PER THAT DISCUSSION WERE DUE MARCH 28TH OF THIS YEAR.

13 DEFENDANT'S OPPOSITION AND ANY EXPERT REPORTS DEFENDANT  
14 INTENDED TO USE WERE TO BE FILED AND SERVED BACK IN  
15 APRIL 25TH.

16 PLAINTIFFS' REPLY IN SUPPORT OF THE CLASS MOTION AND ANY  
17 REBUTTAL EXPERT REPORTS PLAINTIFF INTENDED TO USE ON MAY 25TH.

18 THE HEARING ON THE MOTION WAS JUNE 27TH.

19 PARTIES' EXPERT DESIGNATIONS ON ISSUES OTHER THAN CLASS  
20 CERT JULY 25TH.

21 PARTIES' REBUTTAL EXPERT DESIGNATIONS, THE AUGUST DATE.

22 DISCOVERY CUTOFF OCTOBER 25TH.

23 SO THAT'S WHAT I ORDERED WHEN YOU WERE LAST HERE BACK ON  
24 OCTOBER 3RD, 2016 PER THE SCHEDULE THAT YOU PROVIDED ME, AND  
25 THE OUTLINE OF WHAT YOU WERE SUPPOSED TO DO, WHICH IS WHY THIS

1 ALL MAKES MORE SENSE.

2 I CAN GET THE TRANSCRIPT AND SEE WHAT I ORDERED ON THE  
3 RECORD. THERE'S A LOT OF GAMES PLAYING IN THIS CASE.

4 **MR. KRIVOSHEY:** YOUR HONOR, WE ARE NOT TRYING TO PLAY  
5 ANY GAMES.

6 AS YOU KNOW, WE FILED A MOTION TO EXTEND THE CLASS  
7 CERTIFICATION BRIEFING AS WELL, WHICH THE COURT GRANTED. SO  
8 WE'VE INITIALLY FILED OUR MOTION FOR CLASS CERTIFICATION AND  
9 DISCLOSED OUR EXPERT ON THE 25TH, AND THEN DEFENDANT'S  
10 OPPOSITION WAS DUE A MONTH LATER. THEY DIDN'T MAKE AN  
11 EXPERT -- YOU KNOW, ANY KIND OF REBUTTAL REPORT AT THAT TIME.  
12 AND THEN --

13 **THE COURT:** BUT TO THE EXTENT YOU WANTED IT, THAT'S  
14 WHEN IT WAS DUE.

15 **MR. ELLIS:** WELL, LET ME ALSO SAY, I DON'T THINK  
16 THERE'S ANY GAME PLAYING GOING ON FROM OUR SIDE EITHER.

17 **THE COURT:** GIVEN WHAT JUDGE CORLEY HAS TOLD ME, I AM  
18 NOT SO -- I'M TAKING THAT WITH A GRAIN OF SALT.

19 **MR. ELLIS:** WELL, I UNDERSTAND WHAT JUDGE CORLEY HAS  
20 SAID. I HAVE APPEARED IN FRONT OF HER A COUPLE OF TIMES.  
21 MR. VALENTI HAS APPEARED IN -- IN FRONT OF HER A FEW TIMES.

22 THE PROBLEM IS WITH THIS CASE, WE STARTED OFF, WE THOUGHT  
23 WE HAD A SETTLEMENT. AND AS YOU RECALL, WE BRIEFED THAT, AND  
24 THAT REALLY SLOWED, I THINK, EVERYTHING DOWN. THOSE THINGS  
25 HAPPEN IN CASES LIKE THIS.



1           AND WE ARE -- WE ARE TRYING TO COMPLY WITH THEIR DISCOVERY  
2           OBLIGATIONS. WE DEAL WITH A SMALL COMPANY. I KNOW THAT  
3           PLAINTIFFS' COUNSEL WILL DISAGREE WITH THAT, BUT I HAVE BEEN  
4           DOING, YOUR HONOR, I HAVE BEEN DOING CLASS ACTIONS, CONSUMER  
5           CLASS ACTIONS FOR 30 YEARS. EVERY TIME I DEAL WITH A CLIENT,  
6           THEY TELL ME WE CAN'T DO THIS AND WE TELL THEM YOU HAVE TO.  
7           IT'S A STRUGGLE AND WE GO THROUGH.

8           ONE OF THE ISSUES THAT I PERSONALLY HAVE HERE IN THIS CASE  
9           IS THAT THE SCOPE OF THE DISCOVERY THAT'S BEING ASKED, WHEN WE  
10          ARE LOOKING FOR 60 MILLION, WHICH IS WHERE WE ARE AT RIGHT  
11          NOW, 60 MILLION SEPARATE RECORDS DEALING WITH PEOPLE AND HOW  
12          ARE WE GOING TO DO THAT IN A RULE 26 WITH THE ESI, IT'S A LOT.

13          AND THIS IS NOT A CLASS ACTION TYPICALLY THE WAY THAT  
14          YOU'VE HAD CLASS ACTIONS IN FRONT OF YOU, I DON'T THINK. THIS  
15          IS A WRONG NUMBER CLASS ACTION. THAT'S WHAT IT HAS COME DOWN  
16          TO NOW, NOW THAT MCMILLION AND ADEKOYA ARE NO LONGER HERE.

17          WHEN YOU ARE DEALING WITH A WRONG NUMBER CLASS ACTION BY  
18          DEFINITION, YOU DON'T HAVE SOMETHING IN YOUR RECORDS THAT SAY  
19          THAT YOU'RE CALLING THE WRONG PERSON.

20          SO, YOU KNOW, SPEAKING ON BEHALF OF PLAINTIFFS' COUNSEL,  
21          THEY HAVE DONE A PRETTY GOOD JOB AT TRYING TO TRACK THIS DOWN,  
22          BUT IT'S REALLY DIFFICULT.

23          AND THE MAGISTRATE JUDGE, I KNOW, WHENEVER WE GO INTO  
24          FEDERAL COURT OR STATE COURT THESE DAYS, REALLY, YOU KNOW,  
25          IT'S LIKE DISCOVERY IS OPEN AND THERE SHOULD NOT BE ANY

1 LIMITATIONS. BUT THE FACT IS, UNDER RULE 26, WE ARE GOING TO  
2 HAVE TO DEAL WITH IS THE CANDLE WORTH THE FLAME.

3 SO WHAT WE HAVE DONE, GOING ALL THE WAY BACK TO WHEN I  
4 WASN'T HANDLING THE CASE, BUT MY PARTNER, ANDREW STEINHEIMER  
5 WAS, WHO IS NOW WITH THE ATTORNEY GENERAL'S OFFICE AND I TOOK  
6 THE CASE OVER, AND THERE WAS SOME DELAY FROM THAT, QUITE  
7 FRANKLY, AND I'LL SAY MEA CULPA ON THAT, BUT WAY BACK IN 2016,  
8 WE DID A SAMPLE OF ONE WEEK OF OUR PHONE CALLS. 250,000 PHONE  
9 CALLS DURING THAT ONE WEEK. I THINK THAT'S WHAT IT WAS.

10 AM I CORRECT ABOUT THAT?

11 **MR. VALENTI:** IT SOUNDS RIGHT.

12 **MR. ELLIS:** SO THIS IS -- NO ONE HERE MEANS TO ANNOY  
13 YOU. WE REALLY DON'T, BUT IT'S A CASE. AND IT'S TURNED INTO  
14 A PRETTY BIG CASE. SO WE'RE JUST HERE TO GET THE CASE,  
15 LITIGATE IT, GET THE DISCOVERY DONE.

16 **THE COURT:** WELL, I'VE GOT TO BRING THIS TO A  
17 RESOLUTION ONE WAY OR THE OTHER. AND I CERTAINLY -- I DON'T  
18 KNOW WHICH OF THE TWO OF YOU APPEARED IN FRONT OF JUDGE CORLEY  
19 THE TIME BEFORE LAST.

20 WHICH OF THE TWO OF YOU?

21 **MR. VALENTI:** THAT WOULD HAVE BEEN ME, YOUR HONOR --  
22 I ACTUALLY APPEARED BEFORE HER MOST RECENTLY WHEN SHE  
23 CONTINUED THE DISCOVERY HEARING AS WELL.

24 **THE COURT:** THEN YOU START WORKING ON YOUR FEDERAL  
25 COURT DECORUM. YOU WERE APPARENTLY SO OUT OF LINE THAT ALL

1 THE LAW CLERKS WHO WERE SITTING IN THERE WATCHING WERE  
2 APPALLED, AND IT WAS APPARENTLY SO OBVIOUS THAT MY LAW CLERK,  
3 WHO WASN'T EVEN THERE, BROUGHT ME THE TRANSCRIPT. SO I DON'T  
4 KNOW WHAT IT IS YOU THINK YOU WERE SAYING OR HOW YOU WERE  
5 SAYING IT, BUT YOU NEED TO IMPROVE.

6 **MR. VALENTI:** UNDERSTOOD, YOUR HONOR.

7 I GUESS THE POINT I WAS TRYING TO MAKE WITH JUDGE CORLEY  
8 WAS THAT THE BURDEN IN THIS CASE IS IMMENSE, AND THE  
9 PRODUCTION THAT MY CLIENT'S BEING REQUIRED TO MAKE AND IS  
10 BEING ORDERED IS VERY OVERBROAD AS NOTED IN THE CMC STATEMENT  
11 THAT WE SUBMITTED BEFORE YOUR HONOR. MANY OF THE EMAILS THAT  
12 WE HAVE BEEN ORDERED TO PRODUCE HAVE NO RELEVANCE  
13 WHATSOEVER --

14 **MR. ELLIS:** MR. VALENTI, APOLOGIZE TO THE COURT.

15 **MR. VALENTI:** I DO APOLOGIZE, YOUR HONOR. AND I  
16 APOLOGIZE TO JUDGE CORLEY AS WELL. I WAS MERELY ADVOCATING  
17 FOR MY CLIENT'S POSITION.

18 **MR. ELLIS:** I'M SORRY, I DIDN'T MEAN TO INTERRUPT,  
19 YOUR HONOR.

20 **THE COURT:** ALL RIGHT. WHERE ARE WE GOING FROM HERE?

21 **MR. KRIVOSHEY:** WELL, YOUR HONOR, NOT TO MAKE THIS  
22 HEARING INTO A DISCOVERY HEARING, BUT --

23 **THE COURT:** YOU WON'T BECAUSE I'M NOT ISSUING ANY  
24 ORDERS ON DISCOVERY. SHE'S TOTALLY IN CONTROL OF THAT  
25 PROCESS. ONE THING THAT I DON'T DO IS GET IN THE WAY OF GOOD

1 MAGISTRATE JUDGES WHO ARE MANAGING MY DISCOVERY. THERE AREN'T  
2 THAT MANY CASES THAT I SEND OUT TO THEM, BUT WHEN I DO, I  
3 DON'T GET IN THEIR WAY.

4 **MR. KRIVOSHEY:** I UNDERSTAND. I JUST WAS HOPING THAT  
5 WE COULD JUST GET SOME DATES ON THE CALENDAR SO WE CAN PROCEED  
6 FROM HERE ON OUT THROUGH THE REST OF THE CASE.

7 **THE COURT:** THAT'S WHY I AM ASKING.

8 I AM NOT MOVING ANY DISCOVERY DATES UNTIL I HEAR BACK FROM  
9 JUDGE CORLEY AND I HAVE A VERY SPECIFIC PROPOSAL ABOUT WHAT IS  
10 BEING -- WHAT WILL BE EXTENDED AND WHAT WILL NOT BE EXTENDED.

11 SO, AS FAR AS YOU WERE CONCERNED, YOU NEED TO OPERATE ON  
12 THE NOTION THAT THAT OCTOBER 25TH DATE IS THE PRIMARY DATE.  
13 THAT'S WHY I SAID, IF YOU HAVEN'T GOTTEN YOUR DEPOSITION  
14 NOTICES OUT, YOU BETTER GET THEM OUT. BECAUSE IF THEY ARE NOT  
15 OUT, THAT'S GOING TO BE A PROBLEM FOR YOU.

16 **MR. KRIVOSHEY:** OKAY. AND THEN GOING BACK TO THE  
17 EXPERT REPORTS THEN....

18 **THE COURT:** RIGHT. SO AS FAR AS I'M CONCERNED,  
19 OPENING REPORTS AT LEAST WITH RESPECT TO CLASS ISSUES ON BOTH  
20 SIDES SHOULD HAVE BEEN --

21 **MR. KRIVOSHEY:** YOUR HONOR, SO OUR EXPERT REPORTS  
22 WOULD BE PREPARING -- WE NEED TO GIVE CLASS NOTICE EVENTUALLY.  
23 SO WE ARE NOT ASKING TO RELITIGATE CLASS CERTIFICATION BY ANY  
24 MEANS.

25 THIS IS JUST, YOU KNOW, INITIALLY IN SUPPORT OF CLASS

1 CERTIFICATION OUR EXPERTS WERE SAYING THAT THEY BELIEVE THAT  
2 DOCUMENTS EXIST, IT CAN BE PRODUCED SO THAT WE CAN MANAGE THIS  
3 CASE AND GO EFFICIENTLY TOWARDS TRIAL.

4 CLASS CERTIFICATION HAS NOW BEEN GRANTED, AND THEY NEED TO  
5 SUPPLEMENT THEIR REPORT TO MAKE IT COMPLETE SO WE KNOW EXACTLY  
6 WHO'S IN THE CLASS.

7 **THE COURT:** ALL RIGHT. ANY DEFENSE... ANY DEFENSE  
8 AFFIRMATIVE REPORTS NEED TO BE DISCLOSED.

9 LET ME ASK, DID I MOVE THIS JULY 25TH DATE THAT WE  
10 DISCUSSED? I GUESS HALF OF YOU WEREN'T HERE.

11 **MR. ELLIS:** I AM NOT AWARE OF THAT, HONESTLY.

12 **MR. KRIVOSHEY:** YOUR HONOR, IT COULD BE... I WILL  
13 APOLOGIZE THAT I WAS NOT AT THAT FIRST HEARING. IT WAS A  
14 CO-WORKER OF MINE WHO HANDLED THAT CASE AT THE TIME WHO HAS  
15 SINCE LEFT OUR CASE, SO AT THE TIME THAT I TOOK OVER, I WAS  
16 GOING OFF OF THE COURT'S ORDERS. AND I APOLOGIZE, I DID NOT  
17 LOOK AT THAT TRANSCRIPT. SO I WAS NOT -- IF THE COURT ORDERS  
18 SOMETHING ON THE RECORD --

19 **THE COURT:** ARE YOU TRIAL COUNSEL --

20 **MR. KRIVOSHEY:** -- THAT WAS NOT IN THE -- THAT DID  
21 NOT MAKE IT TO THE WRITTEN ORDER --

22 **THE COURT:** ARE YOU TRIAL COUNSEL?

23 **MR. KRIVOSHEY:** I WILL BE ON THE TRIAL TEAM, CORRECT.

24 **THE COURT:** ARE YOU TRIAL COUNSEL? THAT IS, YOU ARE  
25 NOT LEAD COUNSEL?

1           **MR. KRIVOSHEY:**   YES.

2           **THE COURT:**   I TAKE IT LEAD COUNSEL WASN'T HERE ON  
3           OCTOBER 3RD, 2016 WHEN WE SET THIS SCHEDULE?   IS THAT WHAT YOU  
4           ARE TELLING ME?

5           **MR. KRIVOSHEY:**   I AM NOT -- SO WE DIDN'T KNOW SHE WAS  
6           LEAVING.   SHE WAS IN THE SAME POSITION AS ME.   SHE WAS GOING  
7           TO BE ON THE TRIAL TEAM.

8           **THE COURT:**   BEING ON THE TRIAL TEAM IS NOT LEAD  
9           COUNSEL.   WAS SHE LEAD COUNSEL?

10          **MR. KRIVOSHEY:**   SHE WAS LEAD IN THE CASE AT THAT  
11          TIME, YES.

12          **THE COURT:**   DO YOU UNDERSTAND WHAT I MEAN BY LEAD  
13          COUNSEL?   THE PERSON WHO IS GOING TO TALK TO THE JURY THE  
14          WHOLE TIME.   WAS SHE THE LEAD TRIAL LAWYER?

15          **MR. KRIVOSHEY:**   NO, SHE WAS NOT.   SHE WAS GOING TO  
16          BE --

17          **THE COURT:**   IT WAS ON YOU, TOO.   ENOUGH.  
18          CAN YOU HAVE THOSE REPORTS -- DO YOU HAVE AN EXPERT?

19          **MR. ELLIS:**    I DON'T.

20          **THE COURT:**   ARE YOU -- BUT YOU DON'T THINK YOU'RE  
21          GETTING ONE?

22          **MR. ELLIS:**    I DON'T PLAN ON GETTING ONE.   I HAVE NOT  
23          SEEN WHAT THE ULTIMATE RULE 26 DISCLOSURE FROM PLAINTIFFS IS  
24          GOING TO LOOK LIKE.   AND I WOULD LIKE AN OPPORTUNITY TO HAVE A  
25          REBUTTAL IF I JUST THINK IT'S WILD ASS -- EXCUSE MY

1 LANGUAGE --

2 **THE COURT:** WE'LL STRIKE THAT.

3 **MR. ELLIS:** -- STUFF IN THE DISCLOSURE.

4 **THE COURT:** DO YOU HAVE ALL OF YOUR EXPERTS?

5 **MR. KRIVOSHEY:** YES. WE HAVE RETAINED OUR EXPERTS.

6 BOTH OF OUR EXPERTS HAVE MADE EXPERT DISCLOSURES. WE WERE  
7 JUST ASKING THE COURT FOR PERMISSION TO AMEND THEM WITH NEW  
8 DISCOVERY THAT'S GOING TO COME OUT.

9 **THE COURT:** ALL RIGHT. ANY OTHER AFFIRMATIVE  
10 DISCLOSURES NEED TO HAPPEN BY OCTOBER 16TH.

11 REBUTTALS WILL BE DUE THREE WEEKS AFTER DISCLOSURE. I SAY  
12 THREE WEEKS OR 21 DAYS IN THE EVENT THAT I GET A  
13 RECOMMENDATION FROM THE MAGISTRATE JUDGE TO EXTEND THE FACT  
14 DISCOVERY, IN WHICH CASE THAT WILL KICK THE EXPERT REPORT.

15 UNDER THE CURRENT MODEL, AMENDMENTS TO CURRENT EXPERT  
16 DISCLOSURES WILL BE DUE 14 DAYS AFTER THE CLOSE OF DISCOVERY.

17 YOU WILL BE GIVEN TWO WEEKS TO DO DEPOSITIONS, AT WHICH  
18 POINT -- OR 14 DAYS, I SHOULD SAY, AND THEN EXPERT DISCOVERY  
19 WILL CLOSE.

20 *DAUBERT* MOTIONS AND DISPOSITIVE MOTIONS TO BE FILED 21  
21 DAYS AFTER THE CLOSE OF EXPERT DISCOVERY. REGULAR 35-DAY  
22 CALENDAR UNLESS OTHERWISE ORDERED.

23 TRIAL DATE APRIL 30TH, 2018.

24 YOUR PRETRIAL CONFERENCE WILL BE APRIL 6. YOUR PRETRIAL  
25 CONFERENCE STATEMENTS WILL BE DUE MARCH 23RD.

1 ON A COMPLIANCE CALENDAR MARCH 16TH. AS I'VE SAID TO THE  
2 OTHER PARTIES, YOU WILL BE EXPECTED TO FILE A JOINT STATEMENT  
3 BY MARCH 9TH INDICATING THAT YOU ARE COMPLYING WITH MY  
4 STANDING ORDER.

5 ANY QUESTIONS?

6 **MR. KRIVOSHEY:** NO, YOUR HONOR.

7 **MR. ELLIS:** THANK YOU, YOUR HONOR.

8 AND LET ME SAY ON BEHALF OF MY FIRM AND MYSELF, AGAIN, I  
9 WANT TO APOLOGIZE FOR ANY NONCOMPLIANCE AND FOR ANYTHING THAT  
10 MYSELF OR MY ATTORNEYS MAY HAVE DONE TO -- THAT WAS  
11 INAPPROPRIATE OR DID NOT SHOW THE PROPER RESPECT OR DEMEANOR  
12 TO THE COURT.

13 AND I PLAN ON APPEARING IN FRONT OF JUDGE -- MAGISTRATE  
14 JUDGE CORLEY MYSELF WHEN THE HEARING GOES FORWARD TO MAKE THAT  
15 SAME APOLOGY TO HER.

16 **THE COURT:** GOOD ENOUGH. WE JUST ALWAYS WANT TO BE  
17 IMPROVING. AND YOU SHOULD KNOW I WON'T TOLERATE IT APPARENTLY  
18 THE WAY SHE DID. I'M NOT THAT NICE.

19 **MR. ELLIS:** I'M A FORMER JUDICIAL LAW CLERK MYSELF,  
20 SO I UNDERSTAND AND HAVE YOUR MESSAGE LOUD AND CLEAR, YOUR  
21 HONOR.

22 **THE COURT:** ALL RIGHT, GENTLEMEN, WE ARE ADJOURNED.

23 **MR. KRIVOSHEY:** THANK YOU, YOUR HONOR.

24 **MR. ELLIS:** THANK YOU, YOUR HONOR.

25 (PROCEEDINGS CONCLUDED AT 3:17 P.M.)



**CERTIFICATE OF REPORTER**

I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE  
UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY  
CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink, reading "Diane E. Skillman", is written over a horizontal line.

DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

SUNDAY, JULY 19, 2020